

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

BRIAN HUDDLESTON,

Plaintiff,

v.

CIVIL ACTION No. 4:20CV00447

FEDERAL BUREAU OF INVESTIGATION
and UNITED STATES DEPARTMENT
OF JUSTICE,

Defendants.

DECLARATION OF MICHAEL P. SPENCE

I, Michael P. Spence, declare as follows:

1. I am currently an Assistant United States Attorney and Deputy Chief within the Homicide Section of the Superior Court Division of the United States Attorney's Office for the District of Columbia ("USAO-DC"). I have been an Assistant United States Attorney since December 2010 and joined the Homicide Section in November 2014. I am presently the Assistant United States Attorney assigned to the investigation of the homicide of Seth Rich. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

2. I submit this declaration in support of Defendant's Response to Plaintiff's Motion for an Order to Show Cause (ECF No. 194) and to demonstrate that the FBI has complied to the fullest extent possible with the Court's Memorandum Opinion and Order dated November 28, 2023 (ECF No. 136) and its Amended Memorandum Opinion and Order dated August 15, 2024 (ECF No. 176) collectively requiring the FBI to conduct and complete a document-by-document

review of the information it possesses on the compact disk containing the image of Seth Rich's personal laptop, Seth Rich's work laptop, the DVD and the tape drive that is responsive to Plaintiff's FOIA requests and to either (1) produce *Vaughn* Indexes addressing the information it possesses on the compact disk containing images of Seth Rich's personal laptop, Seth Rich's work laptop, the DVD, and the tape drive that is responsive to Plaintiff's FOIA requests;¹ or (2) file a motion for summary judgment regarding the information it possesses on the compact disk containing images of Seth Rich's personal laptop, Seth Rich's work laptop, the DVD, and the tape drive that is responsive to Plaintiff's FOIA requests.

FBI AND USAO-DC'S REVIEW OF THE PERSONAL AND WORK LAPTOP CONTENTS

3. In accordance with the Court's Orders, the FBI conducted a document-by-document review of the contents of the Work Laptop, tape drive and DVD (collectively referred to as the "Work Laptop") while the USAO-DC conducted a document-by-document review of the contents of the cd image of Seth Rich's Personal Laptop (referred to herein as "Personal Laptop"). Information concerning USAO-DC's review, specifically the types of records and functional categories of information, is provided below.

A. Types of Records

4. Providing a document-by-document description or listing of the records responsive to plaintiff's request falling in the categorically denied records would undermine the very interests that the FBI seeks to protect under Exemption 7(A), in addition to other categorical and underlying exemptions identified below. To protect these interests, USAO-DC has described the types of responsive records contained on the Personal Laptop, which are being withheld in full pursuant to FOIA Exemption (b)(7)(A), as well as the other exemptions stated in the USAO-

¹ The *Vaughn* Index must address the metadata contained within Seth Rich's work laptop.

DC's *Vaughn* index.² The Personal Laptop was provided to the Metropolitan Police Department ("MPD") by a family member of Seth Rich. The Personal Laptop was then provided by MPD to the FBI. It contains a myriad of records pertaining to Seth Rich's personal life, academic and extracurricular work while enrolled in high school and college, and pursuit of employment opportunities following graduation. The USAO-DC's *Vaughn* Index provides a listing of the types of records.

5. In addition to the types of records listed in the USAO-DC's *Vaughn* Index, there are potentially thousands of files on the Personal Laptop that cannot be viewed or processed pursuant to the FOIA. These file types include operating system files (e.g., .exe files), Resilient File System (ReFS),³ New Technology File System (NTFS),⁴ and File Allocation Table (FAT).⁵

6. The USAO-DC compiled a *Vaughn* Index based on its document-by-document review, omitting the unviewable files that cannot be practically processed or documents relating to software license agreements or user manuals associated with software installed on the Personal Laptop. Individual documents that could not be manually opened and appear to be corrupted were not included in the USAO-DC *Vaughn* Index. All documents in the USAO-DC *Vaughn* Index include a record number in the first column. Documents excluded from the review

² Disclosing the responsive information protected by Exemption 7(A) and/or another exemption would reveal information about the nature, scope, focus, and conduct of active, on-going investigations, and thus, cannot be publicly disclosed without undermining the law enforcement interests the FBI is seeking to protect by application of asserted FOIA exemptions in this case.

³ Resilient File System (ReFS) is a file system that Microsoft created for Windows operating systems. It was introduced in Windows Server 2012 and is also available in Windows 10 Pro for Workstations.

⁴ New Technology File System (NTFS) is a file system that stores and organizes files on Windows operating systems.

⁵ File Allocation Table (FAT) is a file system that organizes and manages data on storage devices like hard drives and USB flash drives. It's used by many operating systems, including older versions of Windows.

for the above referenced reasons thus have their record number omitted from the index.⁶ The USAO-DC's *Vaughn* Index identifies and provides specific details, to include metadata, concerning each of the various records it reviewed on the Personal Laptop. This information is broken down into the name of the file, the title associated with the document, the last modified date/time, the created date/time, and the size of the file in bytes, to the extent this information could be obtained by the review tool used to forensically analyze the data. The applicable categorical and underlying exemptions as well as a brief description of the record is also provided. Counsel for the FBI provided the redacted version of the *Vaughn* Indexes for the Personal Laptop and Work Laptop to Plaintiff and filed the Government's Notice of Production with the Court on March 10, 2025.

METADATA⁷

7. As discussed above, the USAO-DC's *Vaughn* Index relating to Seth Rich's Personal Laptop identified metadata, in the form of the name of each file, the title associated with the document, the last modified date/time, the created date/time, and the size of the file in bytes, to the extent this information could be obtained by the review tool used to forensically analyze the data. This metadata was readily available; thus, permitting the USAO-DC to remain in compliance with the FOIA wherein an agency is not required to create new documents,

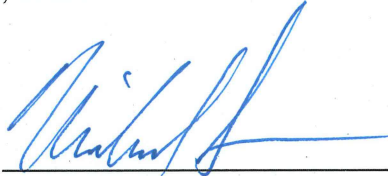
⁶ USAO-DC is willing to provide a revised index that includes information concerning corrupted documents or documents relating to software license agreements or user manuals.

⁷ Metadata is described by many as a set of data that describes and gives information about other data. For example, an author, creation date or file size—that describes a data point or data set. Three (3) types of metadata include: 1). Descriptive Metadata - provides information about the content of the file, such as title, author and keywords; 2.) Structural Metadata - describes the structure and organization of the file, such as file format and layout; and 3). Administrative Metadata - provides information about the management and preservation of the file, such as creation date, file size and usage rights.

conduct research, analyze data, or answer questions to fulfill a FOIA request, but to instead, focus on accessing existing documents and reproducible information held by the agency.

8. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6th day of May, 2025.



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